BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinion of Court Below.

The opinion of the Supreme Court of Illinois appears in full in the record (R. 264). No formal opinion was rendered by the Circuit Court of Piatt County, Illinois. The opinion of the Appellate Court of Illinois for the Third District, not being in issue, is not contained in the record.

II.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by Act of February 13, 1925, Section 344 (a) Title 28, U. S. C. A.

Dates of Judgment

The judgment of the Circuit Court of Piatt County, Illinois, was entered May 19, 1942.

The judgment of the Appellate Court of Illinois, Third District (denying rehearing) was entered May 4, 1943.

The judgment of the Supreme Court of Illinois was rendered and entered November 16, 1943.

Rehearing

No rehearing from the judgment of the Supreme Court of Illinois was prayed or sought and the time therefore has long since expired.

III.

Statement of Case.

The petitioner, William A. Doss had previously been County Judge and State's Attorney of Piatt County, Illinois, and practiced law in that county for about twenty-five years. Several years ago he became engaged in the publication of a newspaper which he called "The Liberty Press". This paper to the extent of four or five thousand copies, was published as occasion required, and was distributed thruout Piatt County by carrier boys and mailing performed by High School students after school hours. The State's Attorney of Piatt County, Carl I. Glasgow, had been a former associate or employee in the office of Judge Doss, the petitioner, and ill feeling existed between the petitioner, Doss, and other attorneys practicing at the bar of that County. Under date of April 24, 1941, in the issue of the paper known as Issue #12, the petitioner reviewed many activities of the State's Attorney Glasgow and many of the official actions of the State's Attorney in various legal matters in which the petitioner, Doss charged the State's Attorney with being an unfair or partial prosecutor, and with being a lying and deceitful man. These charges were illustrated and fortified by reference to a number of cases and situations charged by the publication as demonstrative of the unfitness of Carl I. Glasgow to his office. The publication charged that Carl I. Glasgow had made false statements with respect to a certain compromise with a Mrs. Shaw of Galesburg; that in the Muse bastardy proceeding the State's Attorney had wrongfully advised a witness not to testify; that in a certain Bell case the State's Attorney had refused to prosecute a criminal charge lodged against said Bell; that the State's Attorney had threatened to indict one Wyatt Muse for bribery if said Wyatt Muse testified in a certain criminal case; similar wrongful actions

on the part of the State's Attorney were cited with respect to the Piatt Smith estate and the Meece criminal case. A Grand Jury was called and a Special State's Attorney was appointed under an order of the Circuit Court to investigate and if possible, return indictments against the petitioner for libel. The present action is based upon the indictment so returned by the Grand Jury.

To this indictment the petitioner filed a motion to quash, the substance of which appears in the abstract of record of the Supreme Court of the State of Illinois at pages 4 to 18 thereof. Such motion was later amended to more fully set forth the grounds for said motion. The motion to quash was overruled and the defendant pleaded not guilty to said indictment. Trial was later held before a jury upon which trial it appears from the abstract of record (pp. 92-95) that the only witness for the People was the State's Attorney Carl I. Glasgow, himself, and his testimony shows only the publication of the newspaper and the distribution thereof to the citizens of Piatt County. The People in their case in chief did not even pretend to prove that the statements in the newspaper were false or malicious, or that the same were not made for justifiable ends and purposes.

Petitioner made a motion for directed verdict at the close of the People's evidence, which was denied. Motion was also made at the close of all of the evidence, for a directed verdict of not guilty, which was likewise denied.

The jury after deliberation, found the accused guilty as to the first count of the indictment and not guilty as to the second count. Motions in arrest of judgment and for new trial were timely made and denied, whereupon the Court sentenced the petitioner, Doss, to a term of six months in the Piatt County jail.

The case was first appealed to the Supreme Court of the State of Illinois, but was by that court transferred to the

Appellate Court for the third district, since only a misdemeanor was involved, and since the Supreme Court of the State of Illinois did not conceive that a constitutional question was involved justifying a direct appeal to that Court. The Appellate Court of Illinois for the third district, affirmed the conviction of the petitioner and later denied the rehearing requested by petitioner.

In order to obtain a review of the case upon its merits, therefore, the petitioner sued out a writ of error to the Supreme Court of Illinois, directed to the Appellate Court for the third district. The cause was argued orally at the September term, 1943 of the Supreme Court of Illinois, taken under advisement and resulted in an opinion affirming such conviction under date of November 16, 1943. No petition for rehearing was filed in the Supreme Court of the State of Illinois, and the twenty five days permitted for the filing thereof has long since expired.

IV.

Specifications of Error.

(1) The Supreme Court of the State of Illinois erred in affirming the judgment, conviction and sentence of the Circuit Court of Piatt County, and the judgment of the Appellate Court for the Third District;

(2) The Supreme Court of the State of Illinois erred in affirming the judgment of the Circuit Court of Piatt County, Illinois, in that the Circuit Court of Piatt County, Illinois, denied to the petitioner due process of law, namely, the right to prove the truth of charges made in the publication, and that the same were published for justifiable ends and purposes;

(3) The Supreme Court of the State of Illinois erred in holding that the petitioner was guilty of criminal libel under

such indictment and in so doing denied to the petitioner the right of freedom of speech and freedom of the press, as guaranteed by both the Federal and State Constitutions;

(4) The Supreme Court of the State of Illinois erred in affirming the judgment of conviction of the Circuit Court of Piatt County, Illinois, in that such judgment of conviction was based upon insufficient evidence upon the part of the People, and denied to the petitioner due process of law as guaranteed by the Constitution of the United States in requiring the petitioner (accused) to establish his innocence of the charge laid in the indictment and in failing to require the People to prove the charge laid in the indictment beyond a reasonable doubt.

(5) The Supreme Court of the State of Illinois erred in denying to the petitioner freedom of speech and of the press guaranteed to him by law.

V.

Argument.

Without a thorough study of the pleadings, bill of exceptions and record in this case, an intelligent presentation of the issues is almost impossible. The underlying thought in this petition and in this argument is that this proceeding is a glaring example of a complete miscarriage of justice.

A study of this record will establish certain facts which it is necessary to understand before discussing the legal questions involved.

One Carl I. Glasgow was State's Attorney of Piatt County, Illinois. The petitioner William A. Doss had practiced law in that county for many years. His son Dwight H. Doss, had recently been admitted to practice in that county. The Bar of Piatt County was and is small, consisting of some six or seven lawyers, and prior to the beginning of the present activities, it was apparent to everyone that an

alignment of attorneys had been set up and rigidly adhered to, with the Doss firm on one side of the many issues, and the six or seven other lawyers always appearing on the opposite side. The cleavage among the lawyers was known to the presiding Judges of that Circuit and the animosity created and engendered by the quarrel among the lawyers pervaded the court room at all times. Carl I. Glasgow had formerly been an employee in the office of petitioner, William A. Doss, but a few years previously had been elected State's Attorney and upon being so elected, he had apparently aligned himself with the opposition lawyers. Mr. Doss, in defense of his American right to liberty and the pursuit of happiness, and to wage his side of the battle, had seen fit to become the editor and publisher of a newspaper known as "The Liberty Press." This newspaper was not printed, edited or published for the benefit alone, of the petitioner, William A. Doss, but was the vehicle which he considered necessary for the education of the citizens of Piatt County from time to time. He considered it his privilege and right to write the record concerning public activity in his county, especially concerning the State's Attorney's office of that county. It became apparent to Mr. Doss that the State's Attorney's office was being used in furtherance of the private motives, malice and desires of the State's Attorney and his allied lawyers. Many criminal and quasi criminal cases had been tried, instituted, dismissed and handled by the State's Attorney in which the Doss law office was interested. In some six or eight particular instances, the petitioner believed that the actions of the State's Attorney demonstrated his partiality.

In April 1941, an issue of The Liberty Press was published by the petitioner, charging that the State's Attorney Carl I. Glasgow was an unfair State's Attorney, that he resorted to persecution rather than prosecution, that in many of his official acts deception had been resorted to,

coercion, threats and pressure in others; that criminal complaints lodged by Mr. Doss on behalf of his clients were dismissed without reason; several remained untried for many months and years and that no effort on the part of the petitioner, William A. Doss was seemingly sufficient to bring about the proper fulfillment of his duties by the State's Attorney. Doss, in his publication, charged the State's Attorney with many shortcomings, many acts of omission and many acts demonstrating personal animosity and ill will and each of the charges in the publication were supported by giving the facts and figures, dates and identity of the various criminal cases which justified the general charge as to unfitness of the State's Attorney. In October 1941, a Grand Jury was called and charged with the special duty of returning indictments, if possible, against the petitioner, William A. Doss, for libel, based upon the previous issues of his newspaper, the Liberty Press. The complaining witness before this Grand Jury of course, was the State's Attorney Carl I. Glasgow. His name appears to be the only name endorsed upon the indictment. Since the State's Attorney could not appear before the Grand Jury in his private capacity as a witness, he prepared and caused the court to sign, an order for the appointment of Oliver D. Mann, of Danville, Illinois, as special State's Attorney. The Special State's Attorney thus appointed from the date of his appointment conducted the Grand Jury hearings but the State's Attorney who had previously testified before the Grand Jury was not recalled as a witness, but the testimony previously given before the appointment of the Special State's Attorney, was merely adopted by Oliver D. Mann as proper evidence upon which the Grand Jury returned the present indictment.

The indictment itself consists of two counts, the first charging that the defendant, petitioner here, did unlawfully and maliciously publish, issue #12 of The Liberty

Press, containing defamatory matter against Carl I. Glasgow, to the effect that Glasgow was and is not a fair and impartial prosecutor, that he was either persecutor or unfair prosecutor in the *Muse* case, in the *Ard* case, in the recent *Bell* criminal case, and charged that the State's Attorney wrongfully bargained the dismissal of the *Bell* case and disregarded petitioner's rights as a citizen; that the State's Attorney threatened to indict one Muse for perjury if the Doss office filed motion for new trial in a certain bastardy case, and that in the judgment of the publisher, the State's Attorney would have a hard time in maintaining his, State's Attorney's, commission if he were brought to task for these and various other acts of malfeasance in office. Accused was found "guilty" on this count.

The second count in similar language charged the accused, William A. Doss, with libel in The Liberty Press issue #12 in the statement that the editor proposed to send a statement of the Piatt County situation to the Governor, the Attorney General of Illinois, to the President of the State Bar Association and to the President of the Piatt County Bar Association, and further charging that if that sort of a lying and deceitful man, meaning Carl I. Glasgow, could fill the State's Attorney's office in that county, then the liberty and property of every person is in jeopardy who refuses to swear allegiance to the Monticello Bar Attorneys. Accused was found "not guilty" on this count.

A motion and two amended motions to quash this indictment were filed, argued and denied. The accused thereupon pleaded not guilty and made a motion for a change of venue from two of the three Judges in that Judicial Circuit. The motion for change of venue was not in such form, either allowed or denied, but the third Judge of that Circuit announced that after a conference with the other Judges of the Circuit, that it had been agreed by the three that none of them would sit in the trial of any case involv-

ing Mr. Doss, and that they had therefore requested the Supreme Court of Illinois to assign a foreign judge to that Circuit for the trial of the case. The Supreme Court of Illinois assigned Honorable James B. Bartley of Joliet. A jury was impannelled and a trial held with such foreign judge presiding. The trial consumed four days' time.

The case in chief made by the State consisted of the testimony of Carl I. Glasgow only. He identified Liberty Press issue #12 as having been published by the accused and as having been circulated in Piatt County; the particular issue of The Liberty Press was offered and received in evidence, and the People rested.

We are now met with a peculiar circumstance in the Illinois Criminal Code. It was and has been the law in the State of Illinois since the year 1818, our admission to the Union, that in a criminal case the burden rests upon the People to prove the guilt of the accused beyond a reasonable doubt, and to the satisfaction of a jury of twelve men or women. Strangely enough, however, the Criminal Code of Illinois, Chapter 38 Sect. 402, in its definition and provisions for the crime of libel, provides that in a libel suit the People are not required to assume the burden of proof cast upon them in all other criminal proceedings, but that the accused, apparently, must establish his innocence of the charge by way of defense. The Section of the Illinois Criminal Code which we refer to is unique in the following provision:

> "In all prosecutions for libel the truth when published with good motives and for justifiable ends, shall be a sufficient *defense.*"
>
> Illinois Bar Assoc. Stat. Sect. 404.

Section 4 of Article II of the Constitution of the State of Illinois, provides:

> "Every person may freely speak, write and publish on all subjects being responsible for the abuse of that

> privilege; and in all trials for libel both civil and criminal, the truth when published with good motives and for justifiable ends, shall be a sufficient defense."

It will be noted from both the above quotations, that truth, good motives, and justifiable ends are defensive requirements imposed upon the accused rather than affirmative charges to be proven by the People. It is significant that in the case in chief, for the People, Carl I. Glasgow, the only witness, did not even testify that the publication in question was untrue; that it was malicious or that it was not published for justiable purposes or without good motive. In an endeavor, therefore, to discharge the burden thus wrongfully cast upon him by the Constitution and the Criminal Code of Illinois, the accused, William A. Doss, proceeded to produce witnesses in defense. These witnesses were each and all called for the purpose of proving the truth of the charges made in the published articles, and further to prove that such publication was made with good motive and for justifiable ends.

The article charged as libelous asserted that the unfairness of the State's Attorney was demonstrated by his threat to indict a certain man named Muse for perjury if Dwight H. Doss filed a motion for new trial in the county court in a bastardy case. Dwight H. Doss was the attorney for the accused in that case and was the son of the petitioner herein. A conversation had occurred between Attorney Dwight H. Doss and the State's Attorney, and the first witness placed upon the stand was such attorney, Dwight H. Doss. He was identified, by name, age, profession and residence, the time and place of the conversation was given, and then the petitioner asked Dwight H. Doss, the witness, the following question:

> "Q. Give the substance of what you said and what he said if anything."

The Special State's Attorney interposed an objection, and the Court after taking the jury from the room, held a conference and required the petitioner to tell him in advance what he expected to prove by each witness whom he later called to the stand. For some reason not shown by the record, the objection made by the State's Attorney was sustained and the witness was not permitted to testify or to detail the conversation which he had had with the State's Attorney with respect to the particular subject matter covered by the newspaper article as showing the unfairness of the State's Attorney. In other words the accused, William A. Doss, petitioner here, charged that the State's Attorney was unfair because he had threatened to indict a witness in a bastardy case for perjury, yet when he attempts to prove that the State's Attorney had made such a threat in the presence of a competent witness, the Court would not permit such showing. Throughout the remainder of the trial similar repeated arbitrary and erroneous rulings were made by the presiding judge with respect to almost every question and item of evidence offered by William A. Doss in his defense. Instead of taking the jury from the court room, the objections were so persistent and so numerous that the Court considered it more convenient for the judge and lawyers to retire to the Judge's Chambers for conference and this procedure prevailed throughout the four days of the trial. The State's Attorney, Mr. Glasgow, sent for his sister, Ina M. Glasgow, who was and is employed in Mr. Doss' office as a stenographer or secretary; he had insisted that his sister resign her position in Mr. Doss' office and accept employment elsewhere; he said to his sister that if she performed any work in the publication of Mr. Doss' newspaper that she herself would be subject to criminal responsibility or civil damages. The State's Attorney further stated to his sister that he and the other lawyers in Piatt County proposed to ruin Mr.

Doss financially, as they could not stop his newspaper in any other way. The sister refused to resign her position in Mr. Doss' office. This transaction and conversation was offered by Mr. Doss as proof of the unfairness of the State's Attorney, his unfitness to hold the office which he held, and his deceitful nature. The presiding Judge did not permit the accused to present this competent evidence to the jury.

We have detailed the foregoing two examples only of the arbitrary and erroneous rulings of the Court. We assert, however, that a mere turning of the pages of the record (bill of exceptions pp. 95 to 165) will disclose that the accused in his attempt to bear the burden of proof wrongfully cast upon him by the Illinois Criminal Code, was unable, through the arbitrary rulings of the Court over a period of four days' time, to get before the jury with any of the well known facts relied upon for his defense. The erroneous and arbitrary rulings of the presiding judge became so insistent, so repeated and so demonstrative of the Court's attitude, that further defense was considered a useless waste of effort, and the petitioner therefore announced that in view of the Court's rulings he could not proceed further.

As will be noted by consulting the record in this case, the greater portion of the trial occurred in Judge's Chambers instead of in the Court room. The complaining witness, Carl I. Glasgow (the State's Attorney) attended these conferences in chambers and took an active part in the argument concerning the admissibility and competency of the evidence of the various witnesses. So that the trial was not a fair, orderly, dignified and judicial hearing of the issues involved, but in effect constituted a Star Chamber Session of the first magnitude.

In addition to the defense of the truth and justifiable ends and motives, the petitioner William A. Doss has asserted

throughout this proceeding that the right of publication and freedom of speech is guaranteed by both the Constitution of the United States and the Constitution of the State of Illinois, and that such freedom of the press shall not be and cannot be abridged. In fact the case of People of *California* v. *Bridges*, was presented to the trial court on the motion to quash the indictment, and the view of the Supreme Court of the United States as set forth in that decision, had been insisted upon by the petitioner, as guaranteed to him by the Constitution of the United States. The Constitutional issues involved in this trial were relied upon in the assignments of error to the Supreme Court of the State of Illinois, but that court in disregard of the errors assigned, transferred the case to the Appellate Court for the Third District. In other words, the Supreme Court of the State of Illinois declined jurisdiction upon the ground that no constitutional question was involved, in the face of the specific assignment of error which did raise the constitutional question now and previously asserted. The Appellate Court affirmed the conviction. Mr. Doss accordingly carried the case to the Supreme Court of Illinois a second time by writ of error, again assigning the constitutional questions and issues of freedom of press and due process of law as guaranteed by the 5th and 14th Amendments to the Constitution of the United States. Needless to say the Supreme Court of Illinois affirmed the decision of the Appellate Court and the decision of the Circuit Court and jury of Piatt County.

Having therefore, completely exhausted every known remedy in the State of Illinois, we now petition this Court for a writ of certiorari in the hope that we may now obtain the justice, process of law, and liberties guaranteed by the Constitution.

The right of the citizen to criticise and discuss the activities of public officials in the State of Illinois has always

been considered as a specific and fundamental right. In *City of Chicago* v. *Tribune Company*, 307 Ill., 595, the Supreme Court of this State held that the privilege of free speech is founded on the principle that it is advantageous for the public interest that the citizen shall not be in any way fettered in expressing his opinions and shall have the right to speak his mind freely where the public service or due administration of justice is involved.

In that case it was further announced that

> "It is a fundamental principle of the American System of government that any person may criticise the government with impunity so long as he does not advocate the violation of existing law or the overthrow of the existing government by unlawful means."

The Supreme Court of Illinois in such decision reviewed the struggle for freedom of the press in this country and used the following language:

> "The struggle for freedom of speech has marched hand in hand in the advance of civilization with the struggle for other great human liberties. History teaches that human liberty cannot be secured unless there is freedom to express grievances. As civilization advanced and as the means for expressing grievances multiplied, the struggle between the people and their despotic rulers became the more bitter. With the opening of the seventeenth century the people began to publish newspapers, and history begins to record unspeakable prosecutions of the editors. For one hundred years the crown forbade the publication of a newspaper without a license. * * * (p. 601): Stephen in his History of the Criminal law of England, written in 1883, says "In one word, nothing short of direct incitement to disorder and violence is a seditious libel. * * * It is enough to say that in this country and in this generation, the time for prosecuting political libels has passed and does not seem likely to return within any definable period."

Continuing the quotation on page 601 of the opinion:

> "There were few prosecutions for libel on government in the American colonies, and no court of last resort in this country has ever held, or even suggested, that prosecutions for libel on government have any place in the American system of jurisprudence. The right of the government to prosecute its accusers was founded on the theory that the king could do no wrong. He was an hereditary monarch and was not responsible to the people. When the people became sovereign, as they did when our government was established under our constitution and the ministers became servants of the people, the right to discuss government followed as a natural sequence." When the sovereign power is vested in an hereditary monarch there is no occasion for discussing the government and exposing its inefficiency or corruption unless to advocate reformation by violence, because there can be no remedy except by revolution. It appears therefore, that there was reasonable foundation for prosecuting the government's critics in the days of 'divine rights' of kings, but since the people are sovereign and since the magistrates are servants of the people, the magistrates can do wrong, and the people have a fundamental right to criticise them and to expose their inefficiency and corruption so that they may be displaced. It is one of the fundamental principles, therefore, of the American system of government, that the people have the right to discuss their government without fear of being called to account in the courts for their expressions of opinion. Cooley says: "The English common law rule which made libels on the constitution or the government indictable, as it was administered by the courts, seems to us unsuited to the conditions and circumstances of the people of America and therefore to have never been adopted in the several States. If we are correct in this, it would not be in the power of the State legislatures to pass laws which should make mere criticisms of the constitution or of the measures of government a crime,

however sharp, unreasonable and intemperate it might be." (Cooley's Const. Lim. 7th ed. 614) Stephen says: "There may, indeed, be breaches of the peace which may destroy or endanger life, limb or property and there may be incitements to such offenses, but no imaginable censure of the government short of a censure which has an immediate tendency to produce such a breach of the peace ought to be regarded as criminal. * * * The change of public sentiment as to the free discussion of political affairs has practically rendered the law as to political libels unimportant, inasmuch as it has practically restricted prosecutions for libel to cases in which a libel amounts either to a direct incitement to crime or to false imputations upon an individual of disgraceful conduct in relation to either public or private affairs."

Continuing the quotation on page 606:

"The fundamental right of freedom of speech is involved in this litigation and not merely the right of liberty of the press. If this action can be maintained against a newspaper it can be maintained against every private citizen who ventures to criticise the ministers who are temporarily conducting the affairs of his government. Where any person by speech or writing seeks to persuade others to violate existing law or to overthrow by force or other unlawful means the existing government he may be punished but all other utterances or publications against the government must be considered absolutely privileged. * * * If the right to criticise the government is a privilege which, with the exceptions above enumerated, cannot be restricted, then all civil as well as criminal actions are forbidden. * * * It follows, therefore, that every citizen has a right to criticise an inefficient or corrupt government without fear of civil as well as criminal prosecution. This absolute privilege is founded on the principle that it is advantageous for the public interest that the citizen should not be in any way fettered in

> his statements, and where the public service or due administration of justice is involved, he shall have the right to speak his mind freely."

Continuing at page 610:

> "We do not pass upon the truth or falsity of the publications nor the merits of the political controversy between the parties. We consider the question solely from the standpoint of public policy and fundamental principles of government. For the same reason that members of the legislature, judges of the courts and other persons engaged in certain fields of the public service or in the administration of justice are absolutely immune from actions, civil or criminal, for libel for words published in the discharge of such public duties, the individual citizen must be given a like privilege when he is acting in his sovereign capacity. This action is out of tune with the American spirit and has no place in American jurisprudence."

We have taken the liberty of the foregoing extensive quotation from the reported decision because the same expresses the thought of the writer more cogently, more pointedly, and more fully than can be done in many printed pages, and we therefore rest our discussion of this portion of the issues with the foregoing quotation. We might add, however, that the same thoughts and the same general principles, have recently been expressed and affirmed in the case of *Bridges* v. *State of California*, the opinion therein written by Mr. Justice Black of this Court, and appearing in 314 U. S. 252, 86 L. Ed. 192, decided December 8, 1941.

As previously stated, the State, in its case in chief, made no proof whatever that the publication in question was malicious, or that the statements therein contained were false. The Court, in ruling upon the motion to quash the indictment, considered that the article was libelous per se. In so ruling, and in later being guided by such ruling, the presiding Judge was in error.

In *Young* v. *Lindstrom*, 115 Ill. App., page 239, it was held that "privilege communications are of two kinds: absolute and qualified. An absolute privilege is confined to cases where the public service or the due administration of justice requires that a party speak his mind freely, and no action can be maintained therefor even though the words be false and maliciously spoken. Occasions where the privilege is qualified extend to a variety of communications made in good faith and from honest motives, upon any subject in which the party communicating has an interest or in reference to which he has a duty to some one for a like interest or duty. On such occasions, a speaker is exempt from liability only so far as he speaks honestly and for some common good. Whether a communication is or is not privileged, is a question of law for the Court. If it is held that the privilege is a qualified one, then it is for the jury to determine whether the defendant in uttering the words, was actuated by honest motives or some good and proper purpose, or by a malicious desire to injure and defame the plaintiff."

From the above quotation from the cited cases, it becomes apparent that publications charged as the basis for the prosecution for libel now presented, was absolutely privileged, since it involved a situation where the public service and the due administration of justice required that the accused speak his mind freely, and no action can be maintained therefore, even though the words be false and maliciously spoken. The trial Judge, apparently, overlooked the fact that the publication in question involved Carl I. Glasgow, in his official position as States Attorney and his conduct of his office in the administration of justice in Piatt County and it was therefore the right and duty of every citizen to expose the short-comings and wrong-doings of that office, whenever occasion required. In so exposing the short-comings and wrong-doings of such pub-

lic official, the petitioner was performing a public and civic duty, of no personal interest to himself, but of vital interest to the community in which he lived and in which the States Attorney held his office. The motion therefore for a directed verdict at the close of the People's case, should have been allowed by the presiding Judge, since at that stage of the proceedings, the prosecutor had failed to prove, or offered evidence, as to the falsity of the statements made, or that the same were maliciously published.

It was and is our contention that this case involves an illustration of absolute privilege and that therefore no burden was cast upon the defendant to prove the truth of the charges, nor the motives with which the same were published, and that in casting such a burden upon the accused, the Court committed fundamental error and denied to the petitioner, William A. Doss, due process of law under the Constitution of the United States. We further contend and believe the record demonstrates that the Court denied due process of law in his repeated erroneous rulings to the petitioner concerning the admissibility of evidence.

In the recent case of *Lisenba*, 314 U. S., 219; 86 L. Ed. 166, this Court held that as applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice. In that decision, this Court stated: "In order to have a denial of it (due process) we must find that the absence of that fairness fatally affected the trial. The actions complained of must be of such quality as necessarily present a fair trial."

This Court then, by way of illustration, recited numerous instances where a trial, sufficient in form, was had but lacking in substance; that such lack of substance was a denial of due process. In the instant case, it may at first appear from the record that the rulings of the presiding Judge as

to the admissibility of evidence, was not a denial of due process, but if by a further reading of the record it becomes apparent, as we claim it does, that the rulings of the trial Judge were so consistent, so numerous and so repeated as to take from the accused all opportunity to discharge the burden cast upon him of proving his innocence, then such rulings on the part of the trial Judge, come within the scope of the due process provision of the United States Constitution. Ordinarily this Court accepts the determinations of the triers of fact, but where such determination "is so lacking in support of the evidence that to give it effect would work that fundamental unfairness which is at war with due process", then this Court is not required to accept the determination of the triers of the fact.

Honorable Judge Bartley, from the beginning of the trial, entertained the belief that the accused should not be permitted to prove the particular incidents mentioned in the publication wherein the States Attorney was at fault. It will be recalled that the indictment does not charge the publication of the mere dogmatic statement that the States Attorney was a deceitful person. If a mere dogmatic statement concerning one's character is made and published, then any evidence tending to prove the truth of such statement is admissible. This publication, however, was not of such type. The articles complained of here, first recited the name, or date, or identity of the particular criminal case in which the States Attorney had demonstrated his unfairness for office, or his untruthfulness, or his deceitful nature. The statement complained of was not that Glasgow was a deceitful person, but on the contrary, the statement complained of was to the effect that he was a deceitful person because in a certain case he had done a certain deceitful thing and proof of his deceitful nature therefore depended upon proof of the circumstances surrounding the particular incident where such deceit was disclosed. In

other words, the *Bell* case, the *Ard* case, the *Muse* case, the Smith Estate, and each of the other matters mentioned in the publication, became competent and admissible by way of defense.

An identical situation occurred in the State of Illinois, and is disclosed in the case of *Cooper* v. *Illinois Publishing and Printing Company*, 218 Ill. App., 95, where a certain Judge was charged with being unfit for the office because of his handling of numerous sex and moral cases in his Court, the cases being enumerated and referred to by name, title, or date. An attempt was made to exclude evidence concerning these various specific cases, but in each instance the evidence was admitted.

Conclusion.

Wherefore it is respectfully submitted that the petitioner has been aggrieved by the decision and judgment of the Supreme Court of the State of Illinois, in that the freedom of the press and of speech guaranteed to him by both the Federal and State constitutions, has been abridged and denied to him, and that in his trial and the proceedings leading to his conviction of libel, he was and is denied that "due process of law" likewise granted to him and all others by such Federal Constitution, and that this case should accordingly be certified to this Court for its review and determination.

Respectfully submitted,

A. M. FITZGERALD,
Attorney for Petitioner.